

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3851
NOVEMBER 13, 2003**

R E S O L U T I O N

Resolution E-3851. San Diego Gas & Electric Company requests approval of Amendment No. 7 of the Qualified Decommissioning Trust Agreement and Amendment No. 5 of the Nonqualified Decommissioning Trust Agreement pursuant to Section 2.12 of the Qualified Trust Agreement and Section 2.10 of the Nonqualified Trust Agreement. The Amendments reflect the changes required by the Nuclear Regulatory Commission.

Request granted.

By Advice Letter 1525-E filed on September 23, 2003.

SUMMARY

This Resolution approves San Diego Gas & Electric Company (SDG&E) Amendment No. 7 of the Qualified Decommissioning Trust Agreement and Amendment No. 5 of the Nonqualified Decommissioning Trust Agreement pursuant to Section 2.12 of the Qualified Trust Agreement and Section 2.10 of the Nonqualified Trust Agreement. The Executive Director is authorized to sign the Amendments on behalf of the Commission.

BACKGROUND

In its Order Instituting Investigation No. 86, the Commission conducted an extensive investigation into the alternative methods of financing the cost of decommissioning nuclear power plants owned by California utilities. In Decision (D) 87-05-062, the Commission adopted externally managed trust funds as vehicles for accruing decommissioning funds. In that decision, the Commission also established guidelines for preparing these trust agreements.

In response to D.87-05-062, SDG&E established two trust funds: one to hold contributions that *qualify* for an income tax deduction under Section 468A of the Internal Revenue Code (qualified trust), and another to hold the remaining funds (non-qualified trust). On November 25, 1987, the Commission approved the SDG&E trust agreements by Resolution E-3060. The Trust Agreements have been amended and restated from time to time thereafter with Commission approval.

The Commission has set forth its limitations on the nuclear utilities' trust funds in a series of decisions. Ordering Paragraph 6 of D.95-07-055 provides for the agreements to be approved through the Commission advice letter process. Sections 2.12 and 2.10 of the qualified and nonqualified trust agreements, respectively, require Commission approval of amendments to the trust agreements.

By this advice letter SDG&E is requesting Commission approval of the proposed amendments to the Agreements, attached to Exhibit A of AL 1525-E. The amendments incorporate changes intended to address the new notice requirement of the revised Nuclear Regulatory Commission (NRC) regulations. The amendments were approved at the September 10, 2003 meeting of SDG&E's Nuclear Facilities Decommissioning Master Trust Committee (Committee). The amendments would apply to San Onofre nuclear generating stations.

NOTICE

Notice of AL 1525-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

AL 1525-E was not protested.

DISCUSSION

On December 24, 2002, the NRC published revisions to **10 CFR 50.75**, which provide new guidance in the management of decommissioning trust funds. Decommissioning trust agreements must be amended to reflect the new provisions by December 24, 2003, one year after appearing in the Federal

Register. The new requirements are largely a result of deregulation and the NRC's concern that some decommissioning trusts may no longer be subject to state regulatory oversight. However, since SDG&E is an "electric utility" as defined in **10 CFR 2**, the new regulations have minimal impact on SDG&E's Trust Agreements. In such cases, the trust agreements must only be amended to include a requirement that no withdrawal will be made from the trusts unless the NRC is notified at least 30 days in advance and no written objections from the NRC is received during the 30-day period. This notice requirement, however, does not apply if the withdrawal is made for decommissioning or trust administration expenses. SDG&E's Trust Agreements already provide that the trust assets may only be used for such expenses.

The Energy Division has reviewed AL 1525-E and the proposed amendments to the trust agreements and determined that they are in compliance with the applicable Commission requirements as ordered in D.87-05-062 and D.95-07-055. Accordingly, the Energy Division recommends approval of SDG&E's request.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Therefore, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

FINDINGS

1. San Diego Gas & Electric Company filed Advice Letter 1525-E on September 23, 2003 requesting approval of amendments to its nuclear decommissioning trust agreements. The amendments reflect the changes required by Nuclear Regulatory Commission effective December 24, 2003.
2. Decision 87-05-062 requires externally managed trust funds to finance the decommissioning of nuclear power plants.
3. Decision 95-07-055 requires that all trust investment management agreements be approved by the Commission through the advice letter process.

4. In its September 10, 2003 meeting, SDG&E's Nuclear Facilities Decommissioning Master Trust Committee approved the proposed amendments to the trust agreements.
5. The amendments to the Agreements as proposed in AL 1525-E are in compliance with applicable Commission requirements and should be approved.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's request in Advice Letter 1525-E is approved.
2. The Commission's Executive Director is authorized to sign the Master Trust Amendments on behalf of the Commission.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 13, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
SUSAN P. KENNEDY
Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate.